

# **PARKE CIRCUIT LOCAL COURT RULES**

## **LOCAL RULE 1 FILING OF PLEADINGS AND SERVICE**

### **(LR61-TR05-TR-1.1, 1.2)**

- 1.1 All pleadings, Motions and Orders and/or any other document filed in Parke County shall conform to Indiana law, including the Indiana Rules of Trial Procedure and Criminal Procedure.
- 1.2 Pursuant to Trial Rule 5(B)(1)(D), the Circuit Court hereby designates the “Mail Boxes” located in the Judge’s Office as a suitable place for service of pleadings upon attorneys who have such boxes.

**LOCAL RULE 2**  
**PROPOSED ORDERS**

**(LR61-TR07-TR-2.1, 2.2)**

- 2.1 No Motion or Petition or other request for relief shall be filed without a proposed Order. Opposing counsel are further requested, where possible, to submit to the Court proposed alternative Orders.
- 2.2 All proposed Orders shall meet the following requirements:
  - A. Contain a distribution list of all attorneys and/or pro se litigants with full addresses.
  - B. Sufficient number of copies of such proposed Order as follows: Original for Court, one copy for each attorney and/or pro se litigant, with envelopes appropriately addressed and postage pre-paid where necessary.

**LOCAL RULE 3  
TRIAL SETTINGS**

**(LR61-TR07-TR-3.1)**

- 3.1 All requests for trial settings or other evidentiary hearings shall be filed and shall contain the following information:
- A) Type of trial or hearing (I.E. jury trial, bench trial, final hearing, fact finding hearing)
  - B) An honest, good faith estimate (after consultation with the opposing party/parties) of the Court time needed for the trial of hearing.

**LOCAL RULE 4  
CONTINUANCES**

**(LR61-TR53.3-TR-4.1)**

- 4.1 Motions for Continuance shall include the following information:
- A) The specific reason for the continuance
  - B) Whether prior continuances have been requested by the moving party
  - C) Whether or not opposing counsel has been advised that a continuance will be requested
  - D) The date and time of the hearing or trial for which a continuance is being sought
  - E) The approximate amount of time needed to elapse before the matter can be heard or tried
  - F) A good faith estimate of the amount of time needed for such hearing or trial

**LOCAL RULE 5  
FAX TRANSMISSION**

**(LR61-TR05-TR-5.1, 5.2)**

- 5.1      The Parke Circuit Court will accept pleadings by FAX so long as FAX transmission includes the FAX source. The Clerk shall file mark said pleadings on the date of receipt. The party transmitting pleadings by FAX must deliver a copy or forward a copy of said pleading to the Clerk within five (5) days by regular mail. The mailed pleading must include the original signature of transmitting counsel.
  
- 5.2      Failure to deliver the signed copy of the FAX original within five (5) days shall make such pleading subject to a Motion to Strike.

**LOCAL RULE 6**  
**SPECIAL JUDGE ASSIGNMENT IN CIVIL MATTERS**

**(LR61-TR79-TR-6.1, 6.2, 6.3)**

- 6.1 Except as provided in paragraph 6.2 herein, if it becomes necessary to reassign a civil case, or other matter in which a Special Judge may be appointed, other than a criminal case, said reassignment shall be made in accordance with Indiana Trial Rule 79 (D), (E), and (F). If it is necessary to name a panel of Judges, then said panel shall consist of other judges within District 7. All reassignments shall be made in accordance with the District 7 “Local Reassignment Rules.” This procedure was established after an opportunity of consulting with other Judges in the Administrative District for the Parke Circuit Court pursuant to ADR 3(a) and after considering the effective use of judicial resources within said Administrative District, and the accessibility of said Judges per Trial Rule 79(j).
- 6.2 In the event the Judge disqualifies himself in any proceeding, other than a criminal cause, involving the Hanner Law Firm, in which the Judge has determined he has a conflict of interest, the cause shall immediately be assigned to one of the following senior judges: The Honorable Charles K. McCrory, The Honorable Dexter L. Bolin, The Honorable Robert M. Hall, and The Honorable Vincent F. Grogg, to be selected as required on a rotating basis in alphabetical order. In the event the Judge selected hereunder is unable to serve, the procedure herein specified shall again be used, except that said Judge shall be removed from the rotation.
- 6.3 In the event no Judge is available to serve as Special Judge for the assignment or reassignment of a civil case or other matter in which a Special Judge may be named, such case shall then be transferred to the Indiana Supreme Court for the appointment of a Special Judge; in the event the presiding Judge in a civil matter per this rule shall conclude that the unique circumstances presented by the case requires the appointment of a Special Judge by the Indiana Supreme Court, the presiding Judge may request the Indiana Supreme Court for such appointment.

**LOCAL RULE 7**  
**WITHDRAWAL OF APPEARANCE**

**(LR61-TR3.1-TR-7.1)**

- 7.1 All withdrawals of appearance shall be in writing and by leave of Court. Permission to withdraw shall be given only after the withdrawing attorney has given his client written notice of his intention to withdraw and has filed a copy of such with the Court, or upon a simultaneous entering of appearance by new counsel for said client. The Court will not grant a request for withdrawal of appearance unless the same has been filed with the Court at least ten (10) days prior to trial date, except for good cause shown.

**LOCAL RULE 8  
CRIMINAL RULES**

**(LR61-CR12-CR-8.1, 8.2)**

8.1 In the event a change of Judge is granted or it becomes necessary to assign another Judge in any felony or misdemeanor proceedings in the Parke Circuit Court, the following individuals have agreed to serve: The Honorable Bruce V. Stengel (Vermillion Circuit Court), The Honorable Susan Orr-Henderson (Fountain Circuit Court), The Honorable Robert J. Lowe (Putman Superior Court), and The Thomas K. Millikan (Montgomery Circuit Court), to be selected as required on a rotating basis in alphabetical order. In the event the Judge selected hereunder is unable to serve, the procedure herein specified shall again be used, except that said unavailable Judge shall be removed from the rotation. By order of adoption of these rules, the Indiana Supreme Court, pursuant to I.C. 33-2.1-7-8 temporarily transfers the above Judge(s) to the Parke Circuit Court for the purpose of reassignment of felony and misdemeanor cases.

8.2 In the event none of the above judges are available for assignment or reassignment of a felony or misdemeanor case, such cases shall be certified to the Indiana Supreme Court for the appointment of a Special Judge. In the event the Judge presiding in a felony or misdemeanor case concluded that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, this presiding Judge may request the Indiana Supreme Court for such appointment.



**LOCAL RULE 9  
PROBATE RULES**

**(LR61-PR00-PR-9.1, 9.2, 9.3, 9.4, 9.5)**

9.1 Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the attorney shall prepare such notice and shall ensure that such notice is properly published and/or served by Certified Mail, Return Receipt Requested. In all respects, the notice shall comply with all statutory requirements. It shall be the attorney's responsibility to ascertain and provide adequate proof thereof regarding whether notice was properly served prior to bringing the matter to the Court.

9.2 Copies of petitions shall be sent with all notices where the hearing involved arises from the matters contained in the petition.

9.3 Notice of the opening of an estate shall be sent by First Class United States Mail to all readily ascertainable creditors, however, the use of Certified Mail, Return Receipt Requested, to serve such notice is recommended.

9.4 Notice of the hearing to be held on a petition to determine an estate insolvent shall be served on all interested parties, including the local representative of the Inheritance Tax Division of the Indiana Department of Revenue.

9.5 Fees. All fees shall be in accordance with Appendix A, "Maximum Fee Guidelines".

**LOCAL RULE 10  
OPERATION OF THE COURT**

**(LR61-AD00-AD-10.1)**

- 10.1** Attorneys, litigants, employees and visitors to the Court and Court Offices shall conduct themselves in a civil manner and shall be expected to dress themselves appropriately for Court and Court-related functions.

**LOCAL RULE 11  
COURT REPORTERS**

**(LR61-AD001-AD-11.1, 11.2, 11.3)**

**11.1 DEFINITIONS.** The following definitions shall apply under this local rule:

- (1) **COURT REPORTER** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
- (2) **EQUIPMENT** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
- (3) **WORK SPACE** means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) **PAGE** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2.
- (5) **RECORDING** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
- (6) **REGULAR HOURS WORKED** means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.
- (7) **GAP HOURS WORKED** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
- (8) **OVERTIME HOURS WORKED** means those hours worked in excess of forty (40) hours per work week.
- (9) **WORK WEEK** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.

- (10) **COURT** means the particular court for which the court reporter performs services. Court may also mean all of the courts in Parke County.
- (11) **COUNTY INDIGENT TRANSCRIPT** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (12) **STATE INDIGENT TRANSCRIPT** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (13) **PRIVATE TRANSCRIPT** means a transcript, including but not limited to a deposition transcript, that is paid for by a private party.

## 11.2 **SALARIES AND PER PAGE FEES.**

- (1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours or overtime hours. The supervising court shall enter into a written agreement with the court reporters which outlines the manner in which the court reporter is to be compensated for gap and overtime hours; i.e. monetary compensation or compensatory time off regular work hours.
- (2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be \$4.00, plus \$25.00 per hour for compiling, indexing exhibits and compiling table of contents; the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.
- (3) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be \$4.00, plus \$25.00 per hour for compiling, indexing exhibits and compiling table of contents.
- (4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$4.00, plus \$25.00 per hour for compiling, indexing exhibits and compiling table of contents.
- (5) A maximum per page fee for an expedited transcript shall be set at \$8.00 per page. If the court reporter is requested to prepare an expedited transcript, the maximum per page fee shall be \$8.00 where the transcript must be prepared within 24 hours or less; \$6.50 where the transcript must be prepared within three working days.

- (6) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either county indigent, state indigent or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the division of state court administration.
- (7) The Court Reporter will not charge a fee for a copy of a state or county indigent transcript.
- (8) The charge for a copy of a private transcript will be \$2.00 per page payable to the Treasurer of Parke County to be deposited in the County General Fund.

### **11.3 PRIVATE PRACTICE**

- (1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcripts, and the court reporter desires to utilize the court's equipment, work space and supplies, the court agrees to the use of the court equipment for such purposes, the court and court reporter shall enter into a written agreement which must, at a minimum, designate the following:
  - (a) the reasonable market rate for the use of equipment, work space and supplies.
  - (b) the method by which records are to be kept for the use of equipment, work space and supplies; and
  - (c) the method by which the court reporter is to reimburse the court for the use of the equipment, work space and supplies.
- (2) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, all such private practice work shall be conducted outside of regular working hours.

**LOCAL RULE 12**  
**RULES FOR EVIDENCE HANDLING, RETENTION AND DISPOSITION**

**(LR61 - AD00-AD-12.1, 12.2, 12.3)**

In all cases the Court shall proceed pursuant to these rules unless the Court directs a longer retention period after motion by any party or on its own motion.

**12.1 RETENTION PERIOD FOR EVIDENCE INTRODUCED IN CIVIL CASES**

- a) Civil Cases, Including Adoption, Paternity and Juvenile Proceedings. All models, diagrams, documents or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them into evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two(2) years from termination of the appeal, retrial or subsequent appeal and termination, whichever is later.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**12.2 RETENTION PERIODS FOR EVIDENCE INTRODUCED IN CRIMINAL MISDEMEANOR, CLASS D AND CLASS C FELONIES AND ATTEMPTS**

- b) Misdemeanor, Class D and C Felonies and Attempts. All models, diagrams, documents or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the Court, three (3) years after the case is dismissed, the defendant found not guilty or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence or post-conviction action is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**12.3 RETENTION PERIOD FOR EVIDENCE INTRODUCED IN CRIMINAL CLASS B AND A FELONIES, MURDER AND ATTEMPTS**

- c) Class B and A Felonies, Murder and Attempts. All models, diagrams, documents or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the

case is dismissed, the defendant found not guilty or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action is pending.

The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

**Non-documentary and Oversized Exhibits.** Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court during the appeal. Such exhibits shall be briefly identified in the transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.

Under no circumstances should drugs, currency or other dangerous or valuable items be included in appellate records.

**Notification and Disposition.** In all cases, the Court shall provide actual notice, by mail, to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and the parties have the duty to keep the Court informed of their current addresses and notice to the last current address shall be sufficient. Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence and the receipt will be made a part of the Court file.

In all cases, evidence which is not retaken after notice should be disposed of by the Sheriff on the Court's order. The Sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the Sheriff with proceeds going to the county general fund.

**Biologically Contaminated Evidence.** A party who offers biologically contaminated evidence must file a pretrial notice with the trial Court and serve all the parties so that the Court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to the juror, but no such evidence, however contained, shall be handled or passed to jurors or sent to the jury room.

**APPENDIX A**  
**MAXIMUM FEE GUIDELINES**  
**SUPERVISED ESTATES, GUARDIANSHIPS AND TRUSTS**

The purpose of this maximum fee schedule is to:

- 1) Provide a guideline to assist the Court in setting fees in probate matters;
- 2) Furnish a guideline to attorneys so they can discuss fees that will be incurred with their clients at the onset of administration;
- 3) Assist the legal profession to arrive a fair and reasonable fee for probate matters.

This schedule is a maximum fee schedule and not a minimum schedule; consequently, requests for fees should not exceed these guidelines, and it is expected that in many instances, fees should be less than maximum in probate proceedings.

Attention is directed to certain criteria applicable to these guidelines, and that the existence of these guidelines does not assure that all fees will adhere to them. The criteria to be considered in setting probate fees include:

A. The time and labor involved; the novelty, complexity or difficulty of the questions involved and the skill required to perform the services properly. This includes a determination as to how much of the attorney's time was devoted to legal matters and how much devoted to ministerial functions;

B. The nature and extent of the responsibilities assumed by the attorney and the results obtained. Included herein are the considerations of the identity of the fiduciary and the character of the probate and non-probate transferred assets;



- C. The attorney's expertise in probate matters;
- D. The sufficiency of assets available for legal services. Inherent herein is whether the attorney's duties are expanded by the existence of non-probate assets because of their Inclusion for tax purposes;
- E. It is expected that the total of fees allowed to a fiduciary and attorney in the administration of an estate will never exceed 10% of the gross estate;
- F. In considering all factors, the Court expects that attorneys will discuss fully their proposed fees with their fiduciaries prior to seeking their approval by the Court;
- G. In all events, the timeliness with which the necessary services are performed, consistent with Code requirements, will be a major factor in the Court's approval of probate fees.

#### **ATTORNEY FEES**

##### **ESTATES:**

Basic fee	\$500.
Gross Estate, first \$100,000	6%
Over \$100,000	4%
Assets passing outside probate estate, but included for tax purposes (Indiana)	3%
Sale of real estate where broker involved	\$500 or 4%
Non probate, included in fed. tax return	Add 3%

Property held jointly not reported on tax returns is not considered part of the gross estate for the purpose of these computations. An additional fee may be charged for services in transferring such property to the survivor based upon time involved.

These percentages contemplate normal estate services, such as the opening of the estate, the qualifying of the fiduciary, the preparation and filing of inventory, the payment of claims, collecting assets, preparing routine petitions, preparing and filing of inheritance tax returns, preparing inheritance tax order, paying the taxes, preparing final report, supplemental reports, orders applicable thereto, and closing estate, and preparing necessary notices.

Probate of will only	\$175.00
Small estate settlement procedure	\$500.00
Wrongful Death Administration:	
Settlement before filing	25%
Settlement after filing/prior to trial	33 1/3%
Trial	50%

#### **GUARDIANSHIPS:**

Uncontested minor- no hearing	\$200.00
Minor-hearing	\$500.00
Adult-already adjudicated incapacitated	\$200.00
Adult-hearing	\$500.00
Inventory	\$150.00
Current report, greater of 5% income or	\$300.00
Sale of real estate	\$500.00
Ex parte petition	\$200.00
Petition where hearing involved and other services at prevailing hourly rate.	

**TRUSTS:**

Docket trust	\$300.00
Current report	\$300.00
Final reports and terminating trust	\$600.00

**FIDUCIARY FEES**

**PROFESSIONAL-ESTATES:** Applicable reasonable rates to be reviewed in light of all prevailing circumstances.

**NON PROFESSIONAL-ESTATES:** An amount not to exceed 50% of attorneys fees

**ATTORNEY:** When attorney serves as both attorney and fiduciary, and additional fee may be charged not in excess of one-third of the attorney fee allowed, provided additional services have been performed which are normally done by the fiduciary and the assets of the estate warrant the allowance of such additional fee.

**GUARDIAN AND TRUSTEE:** Greater of 5% of income or prevailing published rates of professional fiduciary to be reviewed in light of all circumstances.

Extraordinary services will be paid on hourly basis at prevailing rates. Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary services depending upon circumstances may include such matters as defending a will, construing a will, contesting claims, contested petitions to sell adjusting tax matters, petitions for instructions, contested heirship determinations.

**ALL FEE PETITIONS** must specifically set forth the fee requested. If the fees requested fall within the guidelines, a hearing on the same may not be necessary. If all interested persons sign a waiver and consent stating that they have been advised of a request for extraordinary fees or fees exceeding the guidelines, a hearing may not be required. However, the court reserves the right in all fee petitions, ordinary or extraordinary, falling within or without these guidelines, to require an evidentiary hearing.

STATE OF INDIANA

IN THE PARKE CIRCUIT COURT

SS:

COUNTY OF PARKE

2005

IN RE THE MATTER OF

\_\_\_\_\_

61C01-\_\_\_\_\_

W A I V E R   A N D   C O N S E N T

The undersigned, an interested party in the above entitled matter, hereby states:

1.      The maximum fee ordinarily allowed by the Fountain Circuit Court for legal services in this matter would amount to \$ \_\_\_\_\_.
2.      A petition for fees above that amount has been filed and a copy given to me and requesting a fee in the amount of \$ \_\_\_\_\_.
3.      I have examined the requested fee and hereby consent to the allowance of that fee without a hearing and hereby waive any right I might have to a hearing on said requested fee, and hereby request that the Court allow a fee for said requested services in the sum of \$\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

I hereby affirm the above and foregoing under the pains and penalties proscribed by law for perjury.

\_\_\_\_\_

\_\_\_\_\_